

Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number Wesley H. Avery CLS-B (State Bar No. 155724) Peter T. Haven (State Bar No. 175048) Musick, Peeler & Garrett LLP One Wilshire Boulevard, Suite 2000 Los Angeles, California 90017 (213) 629-7600 (213) 624-1376	FOR COURT USE ONLY <div style="border: 2px solid black; padding: 10px; text-align: center;"> <b>FILED</b>  <b>OCT 30 2006</b>  <small>CLERK, U.S. BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA Deputy Clerk</small> </div>
<div style="text-align: center;"><b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA</b></div> In re: HIGHWATER 20 LLC, a California limited liability company,  <div style="text-align: right;">Debtor(s).</div>	CASE NO. SV04-15206-GM

## NOTICE OF SALE OF ESTATE PROPERTY

<b>Sale Date:</b> November 22, 2006	<b>Time:</b> 10:00 a.m.
<b>Location:</b> U.S. Bankruptcy Court, Courtroom 303, 21041 Burbank Bl., Woodland Hills, CA 91367	

Type of Sale: ☒ Public: ☐ Private: Last date to file objections: \_\_\_\_\_

Description of Property to be Sold: See attached Exhibit 1.

Terms and Conditions of Sale: See addendum on next page.

Proposed Sale Price: \$500,000.00.

Overbid Procedure (If Any): See addendum on next page.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e-mail address):

Wesley H. Avery, Esq.  
MUSICK, PEELER & GARRETT, LLP  
One Wilshire Boulevard, Suite 2000  
Los Angeles, CA 90017  
213-629-7635; FAX 213-624-1376 email w.avery@mpqlaw.com

Date: October 27, 2006

## ADDENDUM TO FORM 6004-2

### In re Highwater 20 LLC, Case No. SV 04-15206-GM

#### Terms and Conditions of Sale:

David K. Gottlieb ("Gottlieb"), the duly appointed and acting chapter 7 trustee (the "Trustee") of the bankruptcy estate (the "Estate") of Highwater 20 LLC, a California limited liability company (the "Debtor"), whose bankruptcy case styled In re Highwater 20 LLC, Case No. SV 05-15206-GM4 (the "Bankruptcy Case") is currently pending in the U.S. Bankruptcy for the Central District of California (the "Court"), will move (the "Motion") the Court On November 22, 2006 at 10:00 a.m. (the "Sale Hearing") for the issuance of an order pursuant to 11 U.S.C. § ("Section") 363 and Fed. R. Bankr. P. 9019 approving that global mutual release and sale agreement (the "Agreement") a true and correct copy of which is attached hereto and incorporated herein as **Exhibit 1**, of which the signatories are the following three parties (collectively, the "Parties" or singularly a "Party"): (1) the Trustee on the one hand, and (2) defendant Highwater Granada Hills, LLC, a California Limited Liability Company ("HGH" or "Defendant") and (3) Ronald I. Cooper, an individual ("Cooper") on the other hand (HGH and Cooper will be hereinafter referred to as the "Cooper Parties"). *Inter alia*, pursuant to the Agreement, and for a \$500,000 payment to the Estate: (1) the Trustee on the one hand, and the Cooper Parties on the other hand, will enter into mutual general releases (the "Trustee/Cooper Mutual General Releases") and (2) HGH shall purchase (the "Sale") all of the tangible and intangible property of the Estate under Section 541(a) on an "as is, where is" basis, subject to all liens and encumbrances, without warranty either expressed or implied (collectively, the "Sale Assets").

#### Overbid Procedure:

1. The Agreement is subject to overbid in \$5,000 cash increments by any qualified bidders including HGH (a "Qualified Bidder"), with a minimum overbid of \$505,000 in cash, although no entity or individual has contacted the Trustee with an intent to overbid. After an auction conducted by the Trustee at the Sale Hearing, the best monetary bid (the "Successful Bid" or "Purchase Price" or "Sales Proceeds") in the discretion of the Trustee made by a Qualified Bidder (the "Purchaser") shall be presented to the Court for approval. If HGH is not the Purchaser, then the Trustee/Cooper Mutual General Releases and the Wilshire Escrow provision found at §§ 2(b), 4 and 6-8 of the Agreement shall be deemed void, the Sale Assets will be sold to the Purchaser for the Sales Proceeds which must be paid within thirty (30) days of the entry of an order approving the Motion, and the Purchaser shall substitute in for the Trustee as the plaintiff in that adversary proceeding styled Gottlieb v. Highwater Granada Hills, LLC (In re Highwater 20, LLC), Adv. No. SV 06-1122-GM (the "Adversary Proceeding").

2. Pursuant to the Agreement HGH has paid \$500,000 to the Estate. In order to be deemed a Qualified Bidder, at or before the time of the Sale Hearing a party must tender to the Trustee a bid deposit of \$500,000 (the "Deposit") in cash or cash equivalent and present to the Trustee evidence satisfactory to the Trustee of the party's ability to consummate the purchase of the Sale Assets for the Purchase Price. Should a Qualified Bidder be deemed the Purchaser by

the Court pursuant to the Motion, the Deposit shall be deemed non-refundable should that Qualified Bidder fail to consummate the purchase of the Sale Assets for the Purchase Price.

3. The Trustee requests that he be authorize to determine, in a reasonable exercise of his business judgment: (a) which Qualified Bid, if any, is the Successful Bid, and (b) reject any bid that is not in the best interests of the Estate.

4. Notwithstanding Court approval of either the Agreement and/or of the sale of the Sale Assets to a Purchaser, the Trustee reserves the right to request that the Court approve pursuant to Section 363(b) and Fed. R. Bankr. P. 9019 the bids of other Qualified Bidders in the event that the Purchaser fails to consummate the Sale within thirty (30) days of the entry of an order approving the Motion.



## **GLOBAL MUTUAL RELEASE AND SALE AGREEMENT**

This global mutual release and sale agreement and mutual release (the "Agreement") is entered into by and between the following three (3) parties (collectively, the "Parties" or singularly a "Party"): (1) plaintiff David K. Gottlieb, the duly appointed and acting chapter 7 trustee (the "Trustee" or "Plaintiff") of the bankruptcy estate (the "Estate") of Highwater 20, LLC, a California limited liability company (the "Debtor"), in Chapter 7 Bankruptcy Case No. SV-15206-GM (the "Bankruptcy Case") currently pending in the U.S. Bankruptcy Court for the Central District of California (the "Court") on the one hand, and (2) defendant Highwater Granada Hills, LLC, a California Limited Liability Company ("HGH" or "Defendant") and (3) Ronald I. Cooper, an individual ("Cooper") on the other hand, based on the following recitals (collectively, the "Recitals"):

A. **WHEREAS**, by a grant deed which was recorded on May 7, 2001 in Los Angeles County as document number 01-0773605, the Debtor purchased in fee simple that unimproved real property commonly known as 12101-12171 Shoshone Road and 12130-12166 Highwater Road on approximately 12 acres in the City of Granada Hills, County of Los Angeles, State of California, which bear assessor's parcel numbers: 2601-026-043, 2601-026-044, 2601-058-017, and 2601-058-019 whose legal description is: Portions of Lots 3 and 4 of Tract 10422, in the city of Los Angeles, in the County of Los Angeles, as per map recorded in book 157 Pages 38 to 44 inclusive of Maps, and those portions of Lots 11 and 15, Tract 43454, as per map recorded in Book 1090 Pages 69 to 745 inclusive of Maps, in the office of the County Recorder of Los Angeles, as described on Certificate of Compliance recorded June 29, 1989 as Instrument No. 89-1041432 (the "Property") for \$2.05 million. The Property was zoned (T)RA-1K as of April 7, 2000, but said zoning has purportedly been reclassified to A1-1-K by the City of Los Angeles as of April 7, 2006 which allows only equestrian and agricultural use. HGH and Cooper desire that the (T)RA-1K zoning classification be restored to the Property.

B. **WHEREAS**, by a grant deed which was recorded on April 30, 2003 in Los Angeles County as document number 03-1220991 and executed on April 29, 2003, the Property was transferred from the Debtor to HGH (the "Transfer"). On August 2, 2004 a construction deed of trust in the face amount of \$16,493,750.00 in which the beneficiary is Estate Financial Inc., a California corporation ("Estate Financial") and the trustor the Defendant was recorded in Los Angeles County as Document # 04-1975013 (the "Deed of Trust") to secure a note in that amount in which the borrower is HGH (the "Note") (the Note and Deed of Trust shall be collectively referred to herein as the "Loan"). Pursuant to the Note and Deed of Trust, HGH has borrowed approximately \$14,387,852.72 as of March 1, 2006.

C. **WHEREAS**, the Bankruptcy Case was initiated by the filing of a voluntary chapter 11 on August 3, 2004 (the "Petition Date"). Thereafter, the Bankruptcy Case was converted to a chapter 7 on November 22, 2005 and David K. Gottlieb was appointed as the chapter 7 trustee of the Debtor. The Trustee is the plaintiff and is the defendant in that adversary proceeding styled Gottlieb v. Highwater Granada Hills, LLC (In re Highwater 20, LLC), Adv. No. SV 06-1122-GM (the "Adversary Proceeding") which is currently pending before the Court and which seeks to determine the ownership of the Property and avoid the Transfer. On September 6, 2006 Plaintiff filed a motion for summary judgment (the "MSJ") in the Adversary

Proceeding which shall be heard by the Court on October 11, 2006 (the "Summary Judgment Hearing"). As part of this Agreement HGH and Cooper do not oppose the MSJ.

D. **WHEREAS**, on February 24, 2006 through the Adversary Proceeding the Trustee recorded with the Los Angeles County Recorder as document # 06-0416360 a Notice of Lis Pendens (the "Lis Pendens") concerning the Property.

E. **WHEREAS** approximately \$25,000 (the "Wilshire Escrow Funds") is being held in escrow at Wilshire Escrow Company, a California corporation holding License No. C0194041 ("Wilshire Escrow") for the benefit of the Debtor and Highwater Glad, LLC, a California limited liability company ("Highwater Glad") pursuant to an order of the Bankruptcy Court entered in the Bankruptcy Case on November 9, 2004. On September 14, 2004 Highwater Glad filed a non-priority unsecured claim in the Bankruptcy Case in the amount of \$56,250.00 which has been designated by the Clerk of the Court as Claim No. 2. The Parties believe that Claim No. 2 should be allowed in at least the amount of the Wilshire Escrow Funds and that sum paid over to Highwater Glad pursuant to this Agreement.

F. **WHEREAS** subject to Court approval upon notice to creditors, the Parties wish to enter into mutual releases and forever resolve all claims between the Trustee on the one hand, and HGH and Cooper on the other hand, including *inter alia* all claims that are asserted in the Adversary Proceeding, through HGH or a nominee purchasing (the "Sale") all of the tangible and intangible property of the Estate under 11 U.S.C. § ("Section") 541(a) including without limitation the Estate's interest in the Wilshire Escrow Funds (collectively, the "Sale Assets") pursuant to Section 363(b) and Fed. R. Bankr. P. 9019 in return for a cash payment of at least the Deposit (the "Sale Proceeds") to the Estate by HGH which shall be funded by Estate Financial from undisbursed funds from the Loan and secured by the Deed of Trust to which the Trustee consents. The hearing (the "Sale Hearing") of the Court to approve the Trustee's motion to approve the Sale (the "Sale Motion") pursuant to Section 363(b) and Fed. R. Bankr. P. 9019 shall be heard on regular notice and if time permits prior to the Summary Judgment Hearing. The Sale shall be subject to overbid whereby the highest qualified bidder at the Sale Hearing (be it HGH, its nominee or a third party overbidder) shall be deemed the purchaser (the "Purchaser") of the Sale Assets when approved by the Court.

G. **WHEREAS** HGH has informed the Trustee that it is willing to tender \$500,000 in cash (the "Deposit") to purchase the Sale Assets and/or to secure their performance under this Agreement. HGH and Cooper have informed the Trustee that they believe time to be of the essence with regard to restoration of the (T)RA-1K zoning classification to the Property, and desire that the Lis Pendens be removed after the Deposit is paid to the Trustee but before the Sale is approved by the Court as HGH and Cooper assert that removal of the Lis Pendens is a condition precedent to any restoration of the (T)RA-1K zoning classification. In order to facilitate the removal of the Lis Pendens before the Sale Hearing, HGH and Cooper agree not to transfer an interest in the Property (by deed of trust, mortgage, quitclaim deed, grant deed or otherwise) on or before December 8, 2006 else the Deposit will be forfeited to the Estate as liquidated damages which reasonably reflect the Estate's pecuniary loss due to said material breach of this Agreement.

H. **WHEREAS** HGH and Cooper do not wish to pay the Sales Proceeds pursuant to this Agreement if the (T)RA-1K zoning classification to the Property cannot be restored. As such, if the Purchaser is unable to persuade the City of Los Angeles to restore the (T)RA-1K zoning classification to the Property, the Trustee will refund the Sales Proceeds to the Purchaser within 60 days if a Tender of Rescission is given to the Trustee in the manner stated below before 5pm Pacific Standard Time on December 8, 2006.

I. **WHEREAS**, a claims bar date of April 20, 2006 was established in the Bankruptcy Case, and the Trustee believes that the sum of \$500,000 should reasonably be sufficient to satisfy all timely allowed claims against the Estate.

J. **WHEREAS**, it is the intention of the Parties that should an order of the Court be entered either: (1) denying the Sale Motion or (2) in the case of a successful overbid declaring a party other than HGH or its nominee to be the Purchaser, then: (a) the mutual release provisions of this Agreement shall be null and void and none of the recitals above shall be deemed admitted by any party and (b) the Deposit shall be returned by the Trustee to HGH without interest within sixty days of the entry of said order so as to give the Trustee a reasonable opportunity to confirm that that no interest in the Property has been transferred by HGH.

K. **WHEREAS**, it is the intention of the Parties through this Agreement to fully and finally compromise, settle and release all claims and disputes against each other, which in anyway relate to the Adversary Proceeding of any and every kind or nature whatsoever, past and present known or unknown contemplated or un contemplated between the Parties, in their entirety.

L. **WHEREAS**, nothing contained in this Agreement shall be deemed an admission by either Party of any liability or truth of any fact or allegation contained in pleadings of the Adversary Proceeding which have been disputed and denied. The language contained in this Agreement is solely for the purpose of identifying and defining the scope of this Agreement and to forever settle the Parties disputes.

**NOW WHEREFORE**, the Parties, based on the above Recitals, hereby agree as follows:

1. Definitions.

a. The term "Claims" shall mean any and all manner of action or actions, causes of action in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, loss, costs or expenses, of any nature whatsoever, known or unknown, fixed or contingent, liquidated or unliquidated, whether asserted affirmatively or by way of defense or offset arising from the beginning of time until the date of execution of this Agreement, including without limitation those causes of action asserted in the Adversary Proceeding.

b. The term the "Date the Sale Order becomes Final" shall mean eleven days after the entry of an order of the Court granting the Sale Motion and approving the Sale pursuant

to Section 363(b) and Fed. R. Bankr. P. 9019 (the "Sale Order") during which no appeal of the Sale Order or motion for reconsideration of the Sale Order has been filed.

c. The term "Tender of Rescission" shall mean a grant deed from HGH that transfers good, marketable title to the Property to the Trustee that is actually received by the Trustee on or before 5 pm Pacific Standard Time on December 8, 2006, accompanied by a writing from HGH and Cooper which rescinds this Agreement.

d. The term "Withdrawal of Lis Pendens" shall mean a notice of withdrawal of the Lis Pendens that is duly executed by the Trustee, filed in the Adversary Proceeding and tendered to HGH under the terms of this Agreement.

2. Consideration. In consideration for the mutual promises and mutual releases recited in this Agreement, the Trustee hereby assigns and sells all of the Sale Assets to the Purchaser for the Sales Proceeds subject to Court approval pursuant to Section 363(b) and Fed. R. Bankr. P. 9019.

a. Within ten (10) business days after the execution of this Agreement, HGH and Cooper shall tender the Deposit to the Trustee as an advance on the Loan, and upon receipt of same, the Trustee shall within five (5) business days tender to HGH the Withdrawal of Lis Pendens to be recorded by HGH.

b. Within five (5) business days after the Date the Sale Order becomes Final, or within five (5) business days after December 8, 2006, whichever is later, the Trustee shall dismiss the Adversary Proceeding with prejudice and shall pay the Wilshire Escrow Funds to Highwater Glad without interest.

3. Rescission. If the City of Los Angeles does not restore the (T)RA-1K zoning classification to the Property, then HGH and Cooper may rescind this Agreement if a Tender of Rescission is actually received by the Trustee on or before 5 pm Pacific Standard Time on December 8, 2006. The Trustee shall return the Deposit to HGH within 60 days of receipt of a timely Tender of Rescission on the condition that no interest in the Property has been transferred (by deed of trust, mortgage, quitclaim deed, grant deed or otherwise), in which said event this Agreement shall be null and void and none of the recitals above shall be deemed admitted by any Party.

4. Waiver of right to assert proofs of claim. If the Sale to HGH is approved by the Court, Cooper, HGH and its nominee, and their affiliates, and each of them, waive their right, if any, to file a proof of claim in the Bankruptcy Case against the Estate, either pursuant to Section 502(h) or otherwise.

5. Court Approval. This Agreement and the Sale are subject to Court approval pursuant to Section 363(b) and Fed. R. Bankr. P. 9019. This provision cannot be severed from, or waived out of, this Agreement. Counsel for the Trustee will file and serve the Sale Motion within five (5) business days after the Deposit has been tendered to the Trustee and all parties have signed the Agreement. If the Court denies the Sale Motion or approves the Sale Motion and HGH or its nominee is not the Purchaser, then: (a) the mutual release provisions of this Agreement shall be null and void and none of the recitals above shall be deemed admitted by any



Party and (b) the Deposit shall be returned by the Trustee to HGH without interest within sixty days of the entry of said order after the Trustee has confirmed that that no interest in the Property has been transferred by HGH (by deed of trust, mortgage, quitclaim deed, grant deed or otherwise).

6. Release of Claims against the Estate, the Trustee and his Professionals. In consideration for the promises contained in this Agreement, and except for the rights and obligations contained in or arising out of this Agreement, HGH and its nominee if any, Cooper and each of them, hereby release the Property, the Trustee, his professionals and the Estate, and each of their employees, from any and all Claims.

7. Release of Claims against HGH and Cooper and their professionals. In consideration for the promises contained in this Agreement, the Estate and the Trustee hereby release Cooper, HGH and any nominee, and each of them, and their principals, employees, agents, professionals and assigns, from any and all Claims.

8. Waiver of Section 1542. Each Party acknowledges that there is a risk that, after executing this Agreement, he/it will incur or suffer damage, loss, or injury which is unanticipated at the time of the execution of this Agreement. Each Party assumes such risk and agrees that this Agreement and the releases contained herein shall and do apply to all unknown facts and unanticipated results, as well as those currently known or anticipated. Accordingly, each Party acknowledges that he/it is aware of the provisions of California Civil Code Section 1542 as set forth above and expressly waives all of its benefits and the benefits of any other similar law of this or any other jurisdiction. Section 1542 reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

9. Release Does Not Apply to Settlement Agreement. The Parties hereto expressly agree that nothing contained herein shall operate to release any of the Parties of their respective obligations, representations, warranties, or indemnities under this Agreement.

10. Warranties. Each Party warrants that: he/it has full authority to enter into this Agreement; that each of the statements in this Agreement is true; that he/it has not assigned or conveyed his/its rights to any claim released herein to any other person; that he/it is executing this Agreement voluntarily and providing consent unaffected by duress or undue influence; that he/it has read this entire Agreement, paragraph by paragraph, and executes it only after being fully advised by counsel; that he/it fully understands the meaning of each term in this Agreement and fully understands that this Agreement is a full, final, complete and integrated Agreement which can only be modified in a written document signed by all of the executing Parties; that he/it has neither received nor relied on any promises or representations outside the terms of this Agreement and agrees that none may be offered as evidence of the executing Parties' intentions herein.

11. Retention of Jurisdiction. The Court shall retain jurisdiction to consider any dispute arising out of this Agreement or the performance thereof. In the event that the Bankruptcy Case is no longer pending at the time of said dispute, and the case is not reopened, the Parties agree that the Superior Court for Los Angeles County, California, shall have jurisdiction to resolve said dispute, and in such event both Parties consent to jurisdiction thereat.

12. General Provisions.

a. Additional Documents. Each Party shall, on request of the other Party, take such actions and execute such documents as may be reasonably necessary to carry out the purposes of this Agreement.

b. Applicable Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of California.

c. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and assigns.

d. Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes all prior agreements and understandings.

e. Notices. Notices under this Agreement should be sent via federal express as follows:

To the Trustee:  
Wesley H. Avery, Esq.  
Musick, Peeler & Garrett LLP  
One Wilshire Blvd., 20<sup>th</sup> Floor  
Los Angeles, CA 90017

With a copy to:  
David K. Gottlieb, Chapter 7 Trustee  
15233 Ventura Boulevard, Ninth Floor  
Sherman Oaks, CA 91403

To Cooper and/or HGH:  
Robert A. Lisnow, Esq., APC  
10866 Wilshire Boulevard, Suite 1550  
Los Angeles, CA 90024-4336

With a copy to:  
Mr. Ronald Cooper  
9201 Wilshire Blvd. #307  
Beverly Hills, CA 90210

f. Amendment. This Agreement may be amended, altered, waived or cancelled, in whole or part, only by a writing signed by all Parties.

g. Counterparts. This Agreement may be signed in counterparts, all of which together shall constitute one document.

h. Compromise. This Agreement is entered into in the spirit of compromise. None of the statements or promises contained in this Agreement shall be construed as an admission of any fault or liability whatsoever.


i. Drafting. The Parties have all participated in the drafting of this Agreement and agree that any rule providing for construction against the drafting party shall not apply to this Agreement.

j. Review by counsel. All Parties to this Agreement are represented by counsel.

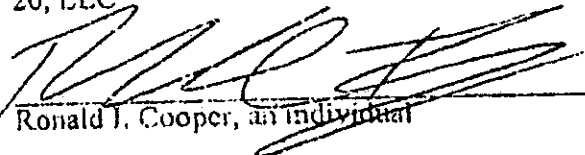
k. Further Cooperation. The Parties hereto agree to execute and deliver such further documents or instruments and take such further actions as the Parties shall reasonably request to effectuate the intent of the Parties as expressed herein

l. Materially of Recitals. Each recital hereof is a material part of this Agreement, is incorporated herein, and is a material inducement to the Parties entering into this Agreement.

Dated: 10/3, 2006

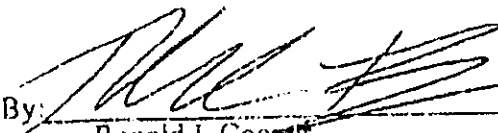
  
David K. Gottlieb, solely in his capacity as Chapter 7 Trustee for the Bankruptcy Estate of Highwater 20, LLC

Dated: 9/22, 2006

  
Ronald J. Cooper, an individual

HIGHWATER GRANADA HILLS, LLC, a  
California limited liability company, pro se

Dated: 9/22, 2006

By:   
Ronald I. Cooper  
Managing Member

Approved as to Form:

Dated: 10/3, 2006

MUSICK PEELER & GARRETT LLP

By: Wesley H. Avery  
Wesley H. Avery, Esq.  
Counsel for David K. Gottlieb, Trustee

LAW OFFICE OF ROBERT A. LISNOW

Dated: \_\_\_\_\_, 2006

By: \_\_\_\_\_  
Robert A. Lisnow, APC  
Counsel for Highwater Granada Hills LLC  
and Ronald Cooper

Approved as to Form:

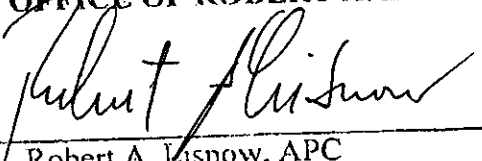
MUSICK PEELER & GARRETT LLP

Dated: \_\_\_\_\_, 2006

By: \_\_\_\_\_  
Wesley H. Avery, Esq.  
Counsel for David K. Gottlieb, Trustee

LAW OFFICE OF ROBERT A. LISNOW

Dated: 9/22/06, 2006

By:   
Robert A. Lisnow, APC  
Counsel for Highwater Granada Hills LLC  
and Ronald Cooper